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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion  
and Protection of Human Rights  
Fifty-third session  
Item 4 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement\*/ submitted by Europe-Third World Centre, a non-governmental organization  
in general consultative status, and the American Association of Jurists, a non-governmental  
organization in special consultative status

The Secretary-General has received the following written statement which is circulated in  
accordance with Economic and Social Council resolution 1996/31.

[29 June 2001]

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\*/ This written statement is issued, unedited, as received in English, French and Spanish, from  
the submitting non-governmental organization(s).



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ENG

## **ACTIVITIES OF THE WORKING GROUP ON TRANSNATIONAL CORPORATIONS OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**I.** In 1998, the Sub-Commission on the Promotion and Protection of Human Rights, duly concerned about the effect of the methods of work and the activities of transnational corporations on the enjoyment of human rights, decided to create a Working Group with the following six points mandate.

“1) to identify and examine the effects of the working methods and activities of transnational corporations...; 2) to examine, receive and gather information...; 3) to analyse the compatibility of the various international human rights instruments with the various investment agreements,...; 4) to make recommendations and proposals relating to the methods of work and the activities of transnational corporations in order to ensure that such methods and activities are in keeping with the economic and social objectives of the countries in which operate, and to promote the enjoyment of economic, social and cultural rights and the right to development, as well as civil and political rights; 5) to prepare each year a list of countries and transnational corporations, indicating, in United States dollars, their gross national product or financial turnover, respectively; 6) to consider the scope of the obligation of the States to regulate the activities have or are likely to have a significant impact on the enjoyment of human rights” (Sub-Commission Resolution 1998/8).

**II.** The frequent negative effects on human rights of the activities of transnational corporations and the delinquent or criminal character (as authors, instigators or accomplices) of certain activities of many of these corporations lead to the issue of submitting these corporations to an effective normative and jurisdictional framework. There is not an easy solution to this problem given that the transnational character of these corporations and the volatility and ubiquity of their activities result in serious difficulties to include them in national norms and jurisdictions. There are international norms, albeit with gaps, but no international jurisdiction competent to apply these norms directly to the companies. This problem appears to be the motivation of points 4 and 6 of the mandate conferred upon the Working Group.

**III.** The Working Group has dedicated a great part of its time in meetings to examining a project of directives for a voluntary code of conduct of the transnational corporations, presented by the United States member of the group, Mr. David Weissbrodt, entitled "Draft Universal Guideline for Companies", for which the last version is dated May 21, 2001. While this does not appear to be part of the mandate of the Work Group, it is an interpretation highly pertinent for discussion by this group.

The AAJ and CETIM deem that voluntary conduct codes (whose usefulness is highly relative, as demonstrated by experience) are private initiatives and as such are not part of the normative activities of the States, of any normative activities (agreement, resolution, declaration, etc.) or initiatives to promote norms (directives, Declaration of Principles, etc.) of intergovernmental organisms directly received by the States and indirectly by private entities. AAJ and CETIM consider that the elaboration of such codes is a task outside of the realm of an organism of the United Nations and more appropriate for a consultant contracted by a transnational society.

**IV.** Nevertheless, given that the project has been presented officially, accompanied by an introduction and a bibliography, it is appropriate for the Working Group to evaluate the project in some detail. First, some specific aspects were analyzed and then the essential contents of the project. The project includes in the "Definitions" all companies, national or transnational and as

such, ignores the specific character of transnational companies and their activities, which is precisely the objective of the study assigned by the Sub-Commission to the Working Group.

Article 1 of the project ignores the issue of prevention of human rights violations. Article 3 reduces the principle of equality to equality of opportunities, which are completely distinct concepts.

The sentence in Article 3 that reads "with a view towards eliminating discrimination" designates the right of non-discrimination the characteristic of a developing right instead of an immediately demandable right.

Article 4, which includes the phrase "handling demonstrations" in its second to last paragraph, constitutes a validation of the tendencies of privatization to maintain public order or that specific groups (private militia, for example) can interpret as "public order".

In the chapter that refers to workers, rights, both the text and the comments enumerate many direct rights, but it should be pointed out that when applying the rule of interpretation of "inclusio unius, exclusio alterius", the absence of some of the rights in this project that are recognized in the ILO Agreement is equivalent to their omission.

This chapter neglects to exclude employers, intervention in the formation and continuity of workers organizations. The absence of the principle of non-intervention in this chapter is notable. Also absent are guarantees for diverse trade union activities, including solidarity actions. In these cases, the "absence" can be interpreted as an exclusion.

Article 11 (which should be Article 6) is written in such a manner that it appears to award transnational companies with the extraordinary faculty of not recognizing national laws and authorities if they consider that they conflict with international standards relating to human rights. The correct principle should be that transnational corporations must observe national laws and authorities and respect the international standards relating to human rights.

Article 11b (which should be Article 6b) limits the right to education to just primary education, for no valid reason.

Article 17 (which should be Article 7) consecrates auto-regulation and the voluntary character of the proposed directives, as confirmed in the third paragraph of the comments to the article.

Article 17a (which should be 7a) complements the aforementioned article, establishing that the corporations will be in charge of auditing and overseeing the directives.

The third paragraph of the comments in this article states that corporations may accept independent controls "so long as the monitoring does not unduly interfere with work being performed". This means that a company may first accept external controls and then refuse them, as did Philip Knight, owner of Nike, when he declared that the controls "didn't allow him to earn a living"<sup>1</sup>.

The last article, Article 17b (which should be 7b), establishes a type of safeguard clause in favour of the transnational corporations: "Nothing in the present guidelines shall be interpreted as restricting or adversely affecting the activities of companies". This obliterates everything previously stated and all that is left is the bottom-line philosophy of the project: **Transnational**

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<sup>1</sup> *Libération*, Paris, 16 and 17 may 2000.

**corporations enjoy total freedom and are not obliged to follow norms or principles, but to respond to their own interests.**

V. In the Introduction of the project, the author attempts to justify the voluntary nature of the directives being proposed, arguing that this is a first step and makes a comparison with the process of the States' adoption of norms of international law, which begins with the adoption of Declarations, then becomes more concrete until, over time, ends with Conventions or Treaties. The author indicates that if these directives become a base for a treaty, the implementation of such treaty should be analogous to the six existing human rights treaties and adds "but taking into account the particular concerns and attributes of the companies" (paragraph 60 of the Introduction). The author points out that for lack of consensus a mandatory code of conduct could not be adopted by the transnational companies, yet neglects to say that it was the rich countries that objected to the adoption of such a code. In paragraph 40 of the Introduction, the author states that "It would be unrealistic to suggest that human rights standards with regard to companies should immediately become the subject of treaty obligations".

The author forgets that while there is no specific mandatory code of conduct, human rights must be respected by transnational companies, including political, civil, economic, social, cultural and environmental rights. **These rights are already consecrated in pacts and related Conventions and in Declarations with the weight of jus cogens, mandatory for all persons, physical and legal, public and private including, of course, transnational corporations.**

It is therefore totally unacceptable to propose, in a document that hopes to be approved by the United Nations, that transnational corporations are apart from and above current international human rights law, or to accept that these companies can decide if they respect and accept the law or not, and when applying the law it is the companies themselves that decide which norms, how and when they apply or to accept that they also can "self-regulate" the transgressions that are committed.

The author of the project even proposes that the Directives, which confer upon transnational companies total freedom to decide whether or not to respect human rights, be used by Tribunals as a criteria to interpret the application of current norms (paragraph 52 of the Introduction). With this interpretive regulation, the judges should limit themselves to verify the conformity of the activities of transnational companies with the sovereign will of the very same companies and not their conformity with current judicial norms.

To accept this project of Directives, formulated in the name of "realism", would mean establishing a treatment of exceptions, contrary to equal treatment under the law, favouring immunity and impunity for transnational companies. This would be a giant step backwards in the promotion, universal application and progressive development of International Human Rights Law.

VI. The AAJ and CETIM consider that the proposal presented by Mr. Weissbrodt is outside of the functions of the Working Group, in its character as an organism of the system of the United Nations that should involve itself in proposing orientation to the States and the international community through the organisms of the system to promote universal respect for human rights and cannot and should not act as a consulting body for private companies, proposing voluntary codes adapted to particular interests.

On the contrary, the Working Group should be involved in complying with the mandate conferred upon it by the Sub-Commission, and within the context of points 4 and 6 of this mandate should try to establish directives or orientations for the international community and for

the States to achieve a framework for transnational corporations of current international and national norms relating to human rights (civil, political, economic, social, cultural and environmental) and to insure that these corporations respond to the appropriate jurisdictions in cases of transgression from the norms. In directive or orientations the Working Group should also propose ways to fill the normative and jurisdictional lacunas that exist on this area.

In order to comply with points 4 and 6 of the mandate and to establish directives and orientations, the Working Group could use as a base the Conclusions of the Seminar organized by AAJ and CETIM that was held in Celigny, Switzerland on May 4-5, 2001.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement\*/ submitted by Pax Christi International, International Catholic Peace Movement,  
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 June 2001]

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\*/ This written statement is issued, unedited, as received in English and French, from the submitting non-governmental organization(s).

## **Peace for Burundi**

The ongoing war in Burundi, the ensuing misery and the Arusha negotiations for establishing transitional institutions have greatly caught the attention of Pax Christi International. Above all, Pax Christi appreciates and promotes all the efforts and initiatives taken by many persons of good will working to lead this country to justice, peace, forgiveness and national reconciliation.

### **Facts and considerations**

- Burundi's population is weighed down by 8 years of war, which have driven several of its sons and daughters to the brink of forced exile, and many more to poverty, misery and despair. This war is the result of social and political exclusion, which has characterized the management of public life since independence in 1962.
- The political elite changed the ethnic dimension into a tool they wielded to get and keep power. Ethnic fundamentalism became an ideology that resulted in explosive cycles of massacres and even genocides. Sustainable peace building and peacekeeping in Burundi must tackle the roots of the injustices caused by this ideology. Armed struggle, always leading to material destruction and the death of innocent victims, can only achieve short-lived victories. Active non-violence, which implies citizens' awareness of their rights and duties as well as the determination of each person to implement non-violent strategies, is highly advisable in order to re-humanise political action.
- The Peace Agreement, signed in Arusha by the parties in conflict on the 28 August 2000, is a tool that can help start the necessary reforms for a return to peace. The implementation process should not be delayed by long and useless debates. The Agreement must serve the immediate interests of the population. Nevertheless we must note that there hasn't been any substantial progress in the implementation of the Arusha Agreement in the last 8 months. On the contrary, in just the last few weeks, the attacks have intensified in the centre of the country. The Arusha negotiations will lead nowhere and a new catastrophe is eminent if the Burundese political actors don't change their behaviour.
- Pax Christi deplores the fact that the Burundese population has not yet had a say in the peace building process. The population needs to express itself on the reforms that must be implemented in order to win peace, justice and full development. The state's seizure of communications must now give way to an open debate in which all the organisations of civil society can take part.

### **Call**

1. Pax Christi International urges the belligerent parties to conclude a ceasefire agreement as soon as possible. But the Peace Agreement will remain null and void if the financing and waging of war remain the first concerns of the country's elites. Burundi's population needs peace. It also needs to fully enjoy its rights: most importantly, the right to live. We ask the International Community to impose an arms embargo and sanctions against all individuals and legal entities that invest in the financing and the waging of war in Burundi.

2. Pax Christi International invites each political actor to be tolerant and participate in open dialogue by favouring the elements of unity and avoiding those of division and opposition.
  3. Pax Christi International asks Burundi's military authorities to regard the armed opposition not as an implacable enemy to be killed, but as a partner within the process of a genuine peace. Taking power by force has never favoured the return to a sustainable peace. As far as the armed opposition is concerned, it is urged to concentrate its concerns on the negotiations aimed at immediately signing a ceasefire agreement.
  4. Peace will remain a utopian dream if poverty and misery are not quickly reduced by an overall development strategy. Pax Christi International appeals for international solidarity to cancel Burundi's debt and allocate the amount of the debt to urgent projects of peaceful conflict prevention and resolution, food security, unemployment and underemployment reduction, reconstruction and social reintegration of displaced and repatriated persons.
  5. Pax Christi International asks the International Community to favour the active participation of the Burundese society in the ongoing debates by setting up all the mechanisms necessary in order to easily arrange for negotiations in Burundi. A group of observers and a minimal protection force under UN leadership is necessary to set minds at rest, notably the essential actors who fled from Burundi for political reasons. The liberation of political prisoners should come within this consideration.
  6. Pax Christi International asks the International Community to facilitate the voluntary repatriation of Burundese refugees. The success of their reintegration will depend on the attention paid to the principles of equity and social justice.
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OTHER ISSUES

Written statement\*/ submitted by Pax Christi International, International Catholic Peace Movement,  
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in  
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\*/ This written statement is issued, unedited, as received in English and French, from the  
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ENG

Pax Christi International registers the continued failure of the Australian Government to uphold its international obligations under the Geneva Convention of July 1951 and the Protocol of 1973, related to the Status of Refugees by attempting to introduce legislation that might alter interpretations of the refugee convention, thus making it more difficult for people who require protection to obtain refugee status.

Weaknesses in the UN Treaty system should not result in undermining of the one instrument that currently exists to protect vulnerable people.

When courts accept claims because of the application of judicial precedents, there are incidents where the Department of Immigration and Multicultural Affairs [Australian Government] have been interfering by threatening to toughen up the laws.

The bipartisan policy of mandatory detention adhered to by the two major political parties in Australia of people who come to Australia is cruel and expensive and leads to conditions that result in demonstrations and rioting.

Abuse of human rights continues to occur at detention centres.

A recent parliamentary report claims that bashings, deprivation, psychological deterioration of detainees and middle of the night musters of detainee where sleep is disturbed three or four times a night to check identities occurred and should be halted. More recent reports of physical assault/abuse by guards at the Villawood Detention Centre.

Protests at the human rights results in suggestions that these people are likely to be deported very quickly.

Rather than investigating claims of abuse and calls for a review of the UN treaty system, the Australian Government has taken a tougher approach to asylum seekers.

The tendency to deter people seeking asylum through harsher treatment of present refugees causes Australia can give rise to the suspicion that Australia takes sides with the countries from which these people have escaped.

The Government has threatened to ignore UN requests to delay the removal of 'failed' asylum seekers from Australia pending the outcome of inquiries by bodies such as the committee Against Torture.

The punitive action of poorly treating people seeking asylum as a strategy to deter other tortured and traumatised people wanting to come to Australia is blatantly immoral.

Sections of the Australian media serve the Australian Government's agenda by falsely labelling them as 'queue-jumpers', 'illegal immigrants', 'boat-people' and 'criminals', thus demonising these people and leading to community vilification.

The failure of the Australian Government to advise people of their rights when seeking protection to obtain refugee status.

The deliberate refusal to advise people of their rights in order to fulfil correct procedures to seek refugee status has led to greater traumatising of people.

The assumption is made that all people who come to Australia and seek protection or asylum are economic immigrants rather than people seeking protection/asylum and refugees.

This leads to unnecessary and lengthy detention.

Money allocated to refugee resettlement has been wasted by using it to screen, reject and remove people who do not fit the definition of refugee in the Convention related to the Status of Refugees of 1951. It is used to lock up people seeking asylum in mostly remote areas of Australia for excessive periods of time while their claims are being assessed, and at the same time making access to lawyers very difficult.

#### Recommendations:

The Australian Government must adhere to the UN Conventions and Protocols relating to the treatment of refugees and stop mandatory detention of all people seeking refugee status. These are the only instruments in place that protect vulnerable people seeking protection.

The Australian Government must allow greater access to detention centres by NGO's, the Churches and Journalists to monitor conditions of the detention centres.

The Australian Government must recognize the right of all people to seek protection from human rights abuses irrespective of where they come from or how they arrive.

People arriving without appropriate visas or documents should be given access to human rights lawyers.

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OTHER ISSUES

Written statement\*/ submitted by the Japan Fellowship of Reconciliation, a non-governmental  
organization in special consultative status

The Secretary-General has received the following written statement which is circulated in  
accordance with Economic and Social Council resolution 1996/31.

[16 July 2001]

\*/ This written statement is issued, unedited, as received in English, from the submitting non-  
governmental organization(s).

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"Comfort women": Current negative reactions and positive developments

JFOR welcomes Commission's Decision 2001/108 Of 24 April 2001 on "Systematic rape, sexual slavery and slavery-like practices" that endorsed Resolution 2000/13 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights concerning Ms. Gay McDougall's reports (E/CN.4/Sub.2/1998/13 and E/CN.4/Sub.2/2000/21).

JFOR wishes to submit some current information as regards this issue to the Sub-Commission and the High Commissioner for Human Rights, who is responsible for monitoring this area<sup>1</sup>.

### 1. Negative reactions by Japan

Firstly, JFOR regrets the negative reactions made by the Japanese government on the textbook controversy. Press reported that a new middle-school history textbook published in 2001 by a Japanese Fusso publishing group "glossed over wartime atrocities and omitted any mention of such practices as the sexual slavery of tens of thousands of women in occupied territory"<sup>2</sup>. Despite the strenuous objections from the ROK and China, the Japanese government refused to fully correct the textbook..

JFOR wishes to draw the attention of the Sub-Commission to the following facts. Earlier in 1996, the Japanese government admitted their military's coercion upon the victims of sexual slavery, "comfort women", made commitments before the Commission on Human Rights and declared that Japan changed its policy to include the description of the historical facts concerning military sexual slavery by the Japanese military as follows<sup>3</sup>:

"Hoping to play an more active role in the international community, the Government of Japan attaches great importance to the school education and is intensifying the efforts in that field, through which the youth who will lead the Japan's future correctly understand the facts of modern and contemporary history. In the current official guidelines for school education, the Government takes such measures as introducing to the senior high school curriculums the courses of "Japanese history A" and "World History A" which lays stress on modern and contemporary history. In the above courses, for example, teachers are expected to give students understanding of the facts of history based on objective and impartial materials, under the item of "Transformation of Asian Countries and Japan" (World History A) or "Circumstances of the World during the periods of the World War I and II and Japan" (Japanese History A).

As a result, about 70% of high school textbooks carry descriptions on the issue of "comfort women".

JFOR believes that the Japanese government's refusal of correction of the above-mentioned textbook and its permission of the textbook with no description of "comfort women" must be interpreted as violations of the international commitment mentioned above.

Secondly, despite harsh criticisms, PM KOIZUMI maintains that he, as PM of Japan, will pay tribute to the war criminals enshrined in YASUKUNI SHRINE that was established by SHINTO, the wartime national religion of Imperial Japan. This is substantially equivalent to the treatment of the war criminals convicted by the International Military Tribunal for the Far East as a national hero. Mr. KOIZUMI's attempt will reverse the IMTFE's landmark judgment, which Japan accepted under Article 11 of the 1951 San Francisco Peace Treaty and to whitewash the war crimes and crimes against humanity committed by Japan. This must be in violation of the spirit of the Article 11<sup>4</sup>.

### 2. Positive developments

JFOR profoundly appreciates the cooperation and movements made by the three opposition parties as well as the citizens and NGOs in Japan and the concerned countries in order to achieve reconciliation through legislation by the Japanese National Diet<sup>5</sup>. Three opposition parties succeeded, for the first time, in submitting to the House of Councilors a united Bill for "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act" below<sup>6</sup>.

Firstly, although it was abolished due to the lack of time for debates, it is expected for the same Bill to be submitted again after the coming election of the House in July 2001. Secondly, this successful submission of the Bill proved that this issue could be solved by legislative measures, and that it destroyed the myth presented by the Japanese government that no direct compensation was legally possible. Thirdly, the concerned NGOs including those groups in victimized countries supporting survivors of military sexual slavery by Japan and the concerned governments except for the Japanese government welcomed this Bill. For the first time, a way to reconciliation of this issue is now visibly seen within our reach.

JFOR wishes to request not only the UN and other international specialized agencies such as the ILO, but also all the concerned governments, NGOs and others such as press for all possible supports to these legislative movements.

Followings are excerpts from "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act (Bill)"<sup>7</sup>:

(Objectives)

Article 1:

In view of the fact that prior to and during World War II, with the involvement of the Imperial Japanese Army and Navy, organized and prolonged coercion of sexual acts was carried out against women and, because of such coercion, the dignity and honor of the women were severely violated and considering that it is the imperative task for the nation of Japan, under its responsibility to take quick steps to restore the honor and others of the women, the objectives of this Act lie in providing the necessary fundamental grounds for the resolution of the issues concerning the victims of wartime sexual coercion and, by doing so, in improving the trustworthy relationship between the peoples of the concerned nations and our people and in making it possible for our country to occupy an honored place in an international society.

(Definitions)

Article 2:

In this act, "wartime sexual coercion" means the act of organized and prolonged sexual coercion of women, who were recruited against their will with direct or indirect involvement of the imperial army and navy before and during the past World War as well as a series of military actions including incidents prior to it.

2 (omitted)

(Measures to Restore Honor)

Article 3:

The government must singularly express an apology for the violation of the honor and dignity of the victims of wartime sexual coercion and implement necessary measures to restore their honor and others as soon as possible.

2 The measures preceding paragraph shall include the monetary payment for the victims of wartime sexual coercion.

(Fundamental Policies)

Article 4:

The government must lay down the fundamental policies on the measures to go forward with the resolution for the issues concerning the victims of wartime sexual coercion ("the fundamental policies" hereafter).

2 (omitted)

3 Whenever the government laid down the fundamental policies or any change of the existing fundamental policies, it shall report them to the Diet and make them public.

(Care for Relationship with the Governments of the Concerned States)

Article 5: (omitted)

(Care for Human Rights of Victims of Wartime Sexual coercion)

Article 6: (omitted)

(People's Recognition and Understanding)  
Article 7: (omitted)

(Measures including Budget)  
Article 8: (omitted)

(Report to the Diet)  
Article 9: (omitted)

(Council for Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion)  
Article 10:  
The Council for Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion (the "Council", hereafter) shall be established at Naikakuhu (the Ministry of the Cabinet).  
2 (omitted)  
3 (omitted)  
4 (omitted)

(Organization of the Council)  
Article 11:  
The Council consists of a President and Council Members.  
2 The Prime Minister shall appoint the President.  
3 (omitted)

(Committee for Promotion of the Investigation)  
Article 12:  
The Committee for Promotion of the Investigation shall be set up under the Council in order to make it deal with the tasks stated in Article 10, 2 (3).  
2 The Committee for Promotion of the Investigation, regularly or whenever necessary, shall formulate the progress of the investigation as well as its results in accordance with Article 4, Paragraph 2, (3) and report them to the President.  
3 The Prime Minister shall appoint the Members of the Committee for Promotion of the Investigation from among those of knowledge and experience and the staff of the pertinent administrative authorities.

(Delegated Legislation by Ordinances)  
Article 13: (omitted)

Additional Clauses  
(Omitted)

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<sup>1</sup> E/CN.4/SUB.2/RES/2000.

<sup>2</sup> Howard W. French, "Japan's Refusal to Revise Textbooks Angers Neighbors", the New York Times, July 10, 2001.

<sup>3</sup> E/CN.4/1996/137.

<sup>4</sup> PM's visit to the shrine also violates the Japanese Constitution. Its Article (3) stipulates: "The State and its organs shall refrain from religious education or any other religious activity."

<sup>5</sup> The legislative movements in Japan is being led by Mr. Koken TSUCHIYA, former President of the Japan Federation of Bar Associations.

<sup>6</sup> On March 21, 2001, Members of the House of Councilors, Mr. Shoji MOTOOKA and Ms. Keiko CHIBA from Democratic Party, Ms. Haruko YOSHIKAWA from Communist Party and Ms. Sumiko SHIMIZU from Social Democratic Party being supported by 76 other Members submitted the Bill to the House Chairperson.

<sup>7</sup> Tentative Translation by Sen.Shoji Motoooka's Office, March 2001



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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS,  
INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL  
COUNTRIES, INCLUDING COLONIAL AND OTHER DEPENDENT COUNTRIES AND  
TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN  
RIGHTS RESOLUTION 8 (XXIII)

Joint written statement\*/ submitted by Interfaith International, the International Association of  
Democratic Lawyers, the International Indian Treaty Council, the International League for the Rights  
and Liberation of Peoples, the Society for Threatened Peoples, non-governmental organizations in  
special consultative status, and the International Educational Development Inc. and Liberation, non-  
governmental organizations on the Roster

The Secretary-General has received the following written statement which is circulated in  
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governmental organization(s).



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ENG

## CEASEFIRE IN SRI LANKA

After years of vain struggle for equality within Sri Lanka, the demands and methods of the Sri Lankan Tamils became radicalized. Their basic demands, i.e. recognition as a nation, of their homeland, of their right to self-determination were first formulated as common platform in 1976 by the newly founded Tamil United Liberation Front and reconfirmed by the Tamil representatives at the peace conference with the Sri Lankan government held under Indian auspices in Thimpu/Bhutan in 1985. The pogrom of 1983 in which hundreds, if not thousands of Tamils were murdered had galvanized the movement to military action as last resort in the pursuit of an independent state as the only solution to escape discrimination. Since then war has been waged particularly in the North and East of the country. During these 18 years between 70-80.000 people died, and 800.000 were internally displaced while an equal number has sought refuge abroad.<sup>1</sup>

The present People's Alliance government came to power in 1994 with broad support of the Tamil community because of its promise of peace and reconciliation to be implemented within a decentralized and democratic polity. The peace negotiations broke down in early 1995. The new constitution, moreover, that was to devolve power to the regions and abolish the autocratic presidential system has not only remained an empty shell, but has never gone beyond the stage of a proposal. Moreover, it has been presented from time to time to an impoverished war-weary Tamil public as well as to the international community as a symbol of the government's basically peaceful and accommodating attitude. As a complement "a war for peace strategy" has been proclaimed simultaneously with the aim of defeating the Liberation Tigers of Tamil Eelam (LTTE) on the battlefield.

In February 2000, it was announced that Norway would take on the role of "facilitator" for talks between the LTTE and the government of Sri Lanka. Having refused any third party mediation, Norway's envoy, Eric Solheim started a shuttle diplomacy. Only if suitable conditions, an agenda and a framework could eventually be mutually agreed upon, would a cease-fire be declared and formal peace negotiations commence. Mid-2000 saw strong military activities in the Northern war zone with spectacular successes of the LTTE. Heavy casualties on both sides, inflated outlays for new military equipment, and unsuccessful campaigns to dislodge the LTTE were followed in December by a unilateral declaration of a month long cease-fire by the LTTE. Even though LTTE declared a unilateral cease-fire the government took this opportunity to accelerate the war activities under the mistaken notion that LTTE is weak and under the expectation that the government forces will have the ultimate military victory.

The controversy concerns the principal demands by LTTE which are:

- (1) *An unconditional and comprehensive cease-fire.*
- (2) *The lifting of the economic embargo imposed on the civil population.* Hundreds of thousands of people, often displaced have lived for years without proper shelter, or medical care and dependent on government's food supplies which are not forthcoming in sufficient quantities. From the point of view of the civilians directly affected, food and medicine are being used as weapons of war, while the government justifies its policy in the name of double use items (military, civilian respectively).
- (3) *The de-proscription of the LTTE as a terrorist organization.* This condition is crucial for the beginning of meaningful negotiations. The proscription of the LTTE in accordance with the Emergency Regulations No 1 of 1998 makes it an offence punishable by imprisonment of at least seven years to be e.g. a member of, wear the uniform or symbol of, attend a meeting of, and distribute material supporting, the proscribed organization.

<sup>1</sup> Associated Press and UN High Commission for Refugees June 20, 2001, quoted in Tamil Guardian No.115, June 27, 2001.

### **The national and international response in the framework of cease-fire and peace initiative:**

Foreign countries, among them Israel, Pakistan, the Czech Republic and the USA lend vital support to the war effort through credit, military hardware or training. And, while President Kumaratunga talks of very good chances for an early peace, her government put utmost pressure on Britain to declare the LTTE a "terrorist organization" (which the UK did in mid-March joining India, USA and Sri Lanka) and increased the defense budget for 2001 to 900 million US dollars.

The LTTE, for its part, urged the governments of the EU and the US to put pressure on Colombo to pursue the peace initiative in earnest.<sup>2</sup>

Thousands of **Tamil** students and civilians in different towns of the war zone demonstrated in the streets asking the government to comply with the demands of the LTTE despite heavy pressure and stern warnings from the military as well as of officials denouncing such demonstrations as open support for the enemy. Bishops from the Catholic Church as well as an alliance of ten Tamil political parties urged the government in Colombo to reciprocate the cease-fire and to accept the LTTE offer for peace negotiations.

Most important, these parties, including those supporting the government in Parliament, **declared the LTTE as sole authentic representative of the Tamil people.**

In early June, quite surprisingly without any prior consultation with all parties concerned, Colombo summoned the Norwegian foreign minister and insisted on the effective removal of Eric Solheim as peace mediator, apparently because of his very intensive commitment to the peace process and his refusal to consider the LTTE simply a terrorist organization. If this move has not derailed the Norwegian peace effort altogether, it has certainly delayed any imminent break-through. Since Mr. Solheim's personal role and efforts had been repeatedly praised and definite dates for the start of peace negotiations had even been announced by Colombo, it is obvious that other political motives are behind such a move.

The crisis for the government has reached a climax, clearly exacerbated by the recent highly damaging LTTE attack on the military base adjacent to Colombo's Katunayake airport, and the subsequent destruction of civilian aircraft. The government is not seeking peace and equitable accommodation of the various national groups in one and the same policy. On the contrary, it is merely fighting for survival, a game in which the war and the 'ethnic issue' is but a ploy to rally the Sinhala Buddhist masses behind the government. The government of Sri Lanka has been waging a propaganda war to convince the international community of the "terrorist" activities and aims of the LTTE "Tamil Tigers". Because of the government's policy hundreds of thousands of Sri Lanka Tamils have left their country for refugee status abroad; they flee the difficult situation where their cultural, social and political rights are not respected. In general they support the LTTE as a visible sign of resistance in Sri Lanka.

### **SACRALIZATION OF THE STATE**

In addition, in Sri Lanka, the government has been using the "religious card" to strengthen the Anti-Tamil campaign; the State wishes to preserve its coherence on the basis of a Buddhist tradition dating back in Sri Lanka to the time King Ashoka and the introduction of Buddhism. Some proponents of the State power, in a "sacralization fashion" even insist that the Sinhalese are descended from high-level Aryans, whereas the Tamil population in Sri Lanka are lower-level Hindus. But such theological claims can not hold too well -- the historical origins of Sinhalese Buddhism are known (and even glorified by the religious parties in the State) -- it is based on some hundred noble families who brought the Buddhism of King Ashoka to Sri Lanka in the distant past. It is impossible for all Sinhalese to have descended from these few "Aryans" from India. It is more probable that these

<sup>2</sup> At the time of the prolongation of the ceasefire in February 2001. Cf. Chronologie der politischen Entwicklung, ibidem, pp 42/43.

nobles intermarried with the local populations which were undoubtedly of Tamil origin, and not Arian. Thus the Singhalese Buddhist kingdoms were not an Aryan product but a mixture of many foreign and local influences. It is held that the Singhalese language is an Aryan language as distinct from Tamil. This may be true, but could be explained easily by the fact that it was a language of the Aryan whose nobles introduced King Ashoka's religion to Sri Lanka, and thus because the dominant position of these nobles in the budding societies of the Buddhist kingdoms, it took first place as a language, and within these kingdoms, Tamil language was replaced by Singhalese. This in no way proves the superiority of the Singhalese over the Tamil culture, and on the other hand, it might be proven that the people living in Sri Lanka at the time of King Ashoka were predominantly Tamil (aside from the indigenous people) and that Singhalese culture grew on the island only because the Aryan nobility brought Buddhism and perhaps a new, Aryan language from king Ashoka's court.

It appears that appeals for a certain sacralization of the Sri Lanka Singhalese State forget too quickly the possibility that Tamil and Singhalese have common ethnic roots, and also demonstrate a fundamental weakness where religion must be called upon to prop up the State.

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